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No. 81-2228

In the Supreme Court
OF THE
United States

October Term, 1981

ASADOOR SOOJIAN,
Petitioner,

vs.

COUNTY OF FRESNO, et al.,
Respondents.

On Writ of Certiorari to the
Court of Appeal of the State of California
Fifth Appellate District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondents assert that there is only one possible legitimate question presented by this matter, to wit:

Do the true facts in this matter—and not the facts as seen through the Petitioner's rose-colored glasses—indicate that Petitioner has acquired a vested right to complete development of a mobilehome park?

Further, as argued *infra*, Respondents assert that this question is neither a "federal question" nor "an important question of federal law" within the meaning of Rule 17.1 of the Rules of this Court.

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STATEMENT OF THE CASE

Respondents respectfully urge this Court to ignore the highly argumentative presentation of facts by the Petitioner in his Statement of the Case. Through the various administrative and judicial levels at which this matter has been litigated, the result has been uniformly contrary to the Peititioner's desires. Accordingly, even though the true facts in this matter are well-established, the Petitioner never tires of presenting his version of the facts as gospel.

Respondents urge this Court to consider the within Petition against the background of the true facts, as found by the Superior Court of the State of California. Rather than repeating this information here, however, Respondents respectfully request the Court to consider the Superior Court's Findings of Fact which appear in the Appendix to the Petition at pages A-37 through A-45. These Findings were adopted by the Superior Court, an independent, disinterested third party which, after having reviewed the voluminous record in this matter, arrived at the conclusion that the facts set forth therein constitute the true facts with respect to this matter, untainted by the argumentative rhetoric of either party. And, as the record indicated, the Court of Appeal of the State of California for the Fifth Appellate District has held that these Findings are supported by substantial evidence. (See Petition Appendix at page A-17)

SUMMARY OF ARGUMENT

A. Petitioner failed to raise any question of a "taking" of his property in the Court of Appeal below. Hence, this Court should refuse to entertain any such question.

B. The doctrine of vested rights is a matter of common law and does not present any federal questions for resolution by this Court.

C. The Opinion of the Court of Appeal below is not in conflict with this Court's decision in *Dobbins v. City of Los Angeles*, 195 U.S. 23 (1904), for the following reasons:

1. *Dobbins* dealt with the law of "taking" and is therefore inapposite to this matter as argued above in A.

2. In the *Dobbins* matter, the City of Los Angeles did not urge the Plaintiff's lack of vested rights upon this Court.

3. *Dobbins* is distinguishable from the instant matter upon its facts, being a case which turned upon the fact that an innocent plaintiff had been victimized by certain evil deeds perpetrated by the City of Los Angeles.

ARGUMENT

Respondents respectfully assert that the requested Writ should be denied for the following reasons:

A. QUESTIONS PERTAINING TO THE LAW OF "TAKING" ARE NOT PROPERLY BEFORE THIS COURT AND SHOULD NOT BE ENTERTAINED.

A very large portion of the Petition raises questions related to the law of "taking" of property without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution. Respondents assert that questions concerning whether Petitioner's property was "taken" within the meaning of the United States Constitution are not properly before this Court because of the Petitioner's failure to raise or brief such questions below. Neither the Opening Brief nor the Reply Brief filed by the Petitioner with the Court of Appeal raised any question of a "taking." Indeed, as can be seen from the opinion of that Court (See Petition Appendix at pages A-3 to A-34) there is no mention of the question of a "taking" anywhere therein. Thus, this Court should refuse to entertain questions pertaining to any alleged "taking." *See, e.g., N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 163-64 (1975); *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 147 n.2 (1970); *Tyrrell v. District of Columbia*, 243 U.S. 1, 4-6 (1917); Rule 21.1(h), Revised Rules of the Supreme Court of the United States.

B. THE QUESTION OF WHETHER THE PETITIONER HAS ACQUIRED A VESTED RIGHT TO COMPLETE DEVELOPMENT OF A MOBILEHOME PARK IS NOT A "FEDERAL QUESTION."

The law of vested rights involves no federal questions. In *Avco Community Developers, Inc. v. Southcoast Regional Commission*, 17 Cal. 3d 785, 791 (1976), *cert. den.*, 430 U.S. 952 (1977), the California Supreme Court stated the rule of vested rights:

> "[I]f a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit."

As noted by that Court, the doctrine of vested rights is essentially a matter of common law, and, as the exhaustive analysis of that subject therein indicates, the law of vested rights does not involve any federal questions. *See id.* at 791-98. In fact, as noted by the Court of Appeal below, the basis upon which the vested rights doctrine rests is the common law concept of estoppel. (See Petition Appendix at page A-18)

The Petitioner's only discussion of the law of vested rights appears in the paragraph commencing at the bottom of page 15 of the Petition and refers only to *Avco Community Developers*. He makes no attempt to demonstrate how the doctrine of vested rights raises any federal question for resolution by this Court.

Indeed, that he could not sustain such a claim is apparent from the past decisions of this Court. It has long been settled law that even an act which dispossesses vested rights does not contravene the Constitution of the United States, provided, of course, that it does not impair the obligation of a contract. This proposition was first enunciated over 150 years ago in the case of *Satterlee v. Matthewson*, 27 U.S. (2 Pet.) 380, 413 (1829):

> "The objection, however, which was most pressed upon the court, and relied upon by the counsel for the plaintiff in error, was, that the effect of this Act was to devest rights which were vested by law in Satterlee. There is certainly no part of the Constitution of the United states which applies to a State law of this description; nor are we aware of any decision of this, or of any circuit court, which has condemned such a law upon this ground; provided its effect be not to impair the obligation of a contract...."

Accord, The Proprietors of the Charles River Bridge v. The Proprietors of the Warren Bridge, 36 U.S. (11 Pet.) 420, 539-40 (1837); *Randall v. Krieger*, 90 U.S. (23 Wall.) 137, 147 (1874). *Satterlee* involved an act of the Pennsylvania Legislature which allegedly deprived the Defendent of certain vested real property rights. As this Court noted, such allegations do not present questions of constitutional magnitude.

In sum, the alleged deprivations asserted by the Petitioner do not present questions of federal law which require resolution by this Court.

C. THE OPINION OF THE COURT OF APPEAL BELOW IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN *DOBBINS V. CITY OF LOS ANGELES*.

It appears from the sixth "question presented" by the Petitioner, as well as from his discussion of *Dobbins v. City of Los Angeles*, 195 U.S. 23 (1904), at page 23 of the Petition, that he is relying upon that case in connection with his newly-asserted "taking" claim. Thus, insofar as *Dobbins* pertains to that subject, as argued above, it is inapposite to the within matter.

It is also apparent from the Points and Authorities urged upon this Court by counsel for the City of Los Angeles in *Dobbins*, reprinted at 49 L.Ed. 173-74, that the City did not raise a question of vested rights for this Court's consideration. Those Points and Authorities do not even argue the issue of whether the work which had been completed by the Plaintiff at the time of the City's action was sufficiently substantial to warrant a finding that the Plaintiff had acquired a vested right to complete her project. Thus, in view of the fact that the City of Los Angeles did not even litigate this particular point, this Court's opinion in *Dobbins* should not be utilized as the standard by which to measure future cases which do in fact turn upon this issue.

Dobbins is also distinguishable from the instant matter upon its facts. Because *Dobbins* was decided in the lower court upon a demurrer, all allegations of the complaint were taken to be true for purposes of the appeal. *See* 195 U.S. at 234. While a review of those allegations led it to conclude that the Plaintiff therein had "acquired property rights" by virtue of having purchased certain property and

partially erected the proposed gasworks thereon, this Court was obviously more concerned with the blatant wrong which had been done to the Plaintiff by the City of Los Angeles. In fact, it appeared from the allegations of the complaint that the City had conspired with a private party to drive the Plaintiff out of business in order to protect that private party's monopoly in the manufacture and supply of gas. *See id.* at 239. Clearly, such conduct could not be, and was not, condoned by this Court.

In the instant matter, there was no innocent petitioner nor any evil governmental entity. Rather, the true facts in this matter reveal the opposite:

The Petitioner was a licensed general contractor who performed work on the site in question without the necessary building or construction permits (See Petition Appendix at page A-44), and continued to do so even after the date upon which the Board of Supervisors had tentatively denied his appeal (See Petition Appendix at page A-41), in a transparent attempt to bolster his argument that his rights to continue his development had vested.

Thus, it can be seen that *Dobbins* provides no basis upon which the Petitioner herein may rely and cannot be said to be in conflict with the opinion of the Court of Appeal below. Of course, this is particularly true in view of the fact that the decision of the Court of Appeal below was decided upon the law of vested rights, which, as argued above, presents no federal question for resolution by this Court.

CONCLUSION

Based upon the foregoing, the Respondents respectfully urge this Court to deny the Petition for Writ of Certiorari.

DATED: July 30, 1982.

Respectfully submitted,

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